Delegation is a foundational characteristic of American representative democracy. Citizens delegate responsibility to legislatures, which, in turn, choose whether to delegate policymaking responsibility to the executive branch. Moreover, determining how institutions allocate policymaking authority is a puzzle of governance that extends well beyond the founding of the American republic. For example, to solve the constitution crisis in seventeenth-century England, the executive (Crown) was afforded the responsibility to offer spending proposals, while the legislature (Parliament) possessed authority to both authorize and appropriate funds in response to these proposals (North and Weingast 1989, 818). In fact, the foundational roots of delegation decisions can be traced even further back to ancient biblical times (Bendor, Glazer, and Hammond 2001, 235; Bendor and Meirowitz 2004, 293).

However, delegation of authority in the American political system affords both benefits and challenges. Separating power among different government institutions can diffuse conflict and thus induce stability requisite for effective, albeit imperfect, governance. Nonetheless, this diffusion of policymaking authority comes at the expense of an efficient system whereby policy change is challenging, electoral accountability
is blurred, and coordination among government branches often becomes exceedingly difficult (Wilson 1973).

Scholars of U.S. political institutions have made both great theoretical and empirical strides examining the causes of legislative delegation to the executive branch. This literature reflects a strong affinity to a Madisonian conception of the separation of powers insofar as the legislative branch is a separate institution with a unique power base that distinguishes it from the executive. Although James Madison (Madison, Hamilton, and Jay 1987/1788) in “Federalist 51” makes it abundantly clear that this distribution of power is necessary to thwart abuse of authority, he nonetheless states that the legislative branch is predominant by constitutional design (see also Wilson 1973/1885; see Rosenbloom in this volume for different perspectives on this claim). As a matter of fact, the preeminent role of Congress in the administrative state has been viewed as desirable on a normative level (Rosenbloom 2000).

It is thus hardly surprising that modern theories of legislative delegation view the legislature as a principal (i.e., the supplier of policymaking authority) and the executive as an agent (i.e., the recipient of policymaking authority). In this view, the delegation problem simply entails the legislature making strategic choices regarding when it should delegate authority to the executive versus when it should not. Focused on this meta-question, scholarly research on legislative delegation has developed both a sophisticated and a well-grounded view of how delegation works from the legislature’s perspective in the form of (1) the tension between committee and floor preferences (e.g., Epstein and O’Halloran 1999; Ferejohn and Shipp 1990), (2) the importance of legislative capacity (Huber and Shipp 2002) and bureaucratic capacity (Huber and McCarty 2004), (3) the principal’s strategic decision calculus under general conditions (Bendor and Meirowitz 2004), and (4) the legislature’s ability to mitigate credible commitment problems through delegation (Falaschetti and Miller 2001).

Generally, however, the key contributions made to the scientific study of legislative delegation to the bureaucracy emanate from scholars whose primary interests are intended to provide a better understanding of legislative institutions (see Moe 1990). I argue that while this legislative-centric perspective has netted valuable insights into delegation problems, it has also had important repercussions in limiting the development of our social scientific understanding of this topic. In particular, the executive’s problem when it comes to delegation has typically been given short shrift in this social scientific perspective, thus precluding a better understanding of delegation problems through that lens (but see, e.g., Bertelli and Feldmann 2007; Krause 2003; Lavertu 2009; Miller 2000; Moe 1990). Thus, although the marriage between the Framers’ intent and our current treatment of legislative delegation is compatible in normative terms, it misses the practical complications that arise for an executive whose power and structure are purposely defined as ambiguous by the Framers (James 2005). For this reason, greater attention and effort are needed to theorize (both analytically and verbally) the role of the executive in the analysis of decisions related to legislative delegation if scholars pursuing the scientific study of bureaucracy are going to make meaningful future strides on this research program.
In making this argument, I discuss and critique what are deemed three “generations” of legislative delegation literature in the modern era. “Modern” is defined as research published over the last thirty years. My use of the term “generation” is not meant to convey temporal order but rather shifts in the substantive focus of research in the modern era. I start with the “first generation” of research on the core rationale underlying the delegation choice confronting legislatures vis-à-vis executive discretion. Approached as a principal–agent problem with implications solely for legislative choice, this first generation focused on legislatures’ balancing of the benefits and costs associated with the delegation choice and identified various mechanisms for maintaining accountability. However, while transaction costs were implicit in these studies (see, for example, Dodd and Schott 1979; Fiorina 1986; Ogul 1976; Weingast 1984), they were not made explicit.

Next, I discuss and critique some of the major theoretical and empirical developments of a “second generation” of research in the legislative delegation literature. Still within a principal–agent framework, this research placed the delegation choice within a separation-of-powers framework that explicitly incorporated transaction costs. Legislatures desire policy control, but they must and do temper this desire with the need for greater policy expertise and institutional capacity derived from the executive. Second-generation research also questioned the assumption that information asymmetries always favor bureaucratic agents over their principals and introduced the idea that bureaucracies also affect the delegation decision. They have also shown that agencies are not totally reliant on elected principals for discretion.

I conclude with four recommendations regarding how the literature on delegation studies can most fruitfully develop from a social scientific study of bureaucracy perspective. Serving collectively as a “third-generation” research agenda, each recommendation seeks to advance Terry Moe’s (1990) call two decades ago for greater theoretical incorporation of executive branch actors in delegation studies. My prescriptions are distinct yet complement Moe’s by emphasizing the importance of more fully understanding executive agents’ incentives and policy actions within the context of delegation.

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THE “FIRST-GENERATION” STUDY OF LEGISLATIVE DELEGATION TO THE BUREAUCRACY

As noted earlier, the modern delegation literature in political science views legislatures as the “principal” and the executive branch as the “agent” (see Wood in this volume for an extensive discussion and full-throated advocacy of the logic of principal–agent theory). The determination as to whether the agent is the president or bureaucracy depends upon the context by which delegation is being studied. As a result, I will use both actors as agents throughout this chapter depending upon
context. I argue that, from a normative perspective, the Framers of the U.S. Constitution thought it desirable for legislators to act as “principals” by possessing the authority to choose whether or not to delegate authority to executive branch policy actors (“Federalist 51”). Because legislatures possess diffuse authority relative to popularly elected executives, this view of delegation seeks to ensure against tyranny by a singular (elected) executive. Furthermore, legislators are elected representatives who are comparatively closer to the will of the people than are executive branch agents, given legislators’ reelection motives. With this said, however, legislators possess limited means to handle policymaking authority because the executive branch possesses greater expertise and capacity in absolute terms. As a result, the legislative branch has an incentive to delegate responsibility to the executive branch under conditions deemed favorable to the former branch (see Workman, Jones, and Jochim in this volume for an information processing-based normative theory of bureaucracy that builds on this insight).

More specifically, the benefits of legislative delegation are: (1) increased policy expertise resulting in better policy outcomes; (2) greater time and resources that can be spent on other more preferred legislative activities, since oversight and monitoring are costly with little electoral return; (3) mitigation of policy responsibility, and hence blame, for unpopular policies or outcomes—especially when the opposition party controls the executive branch; and (4) mitigation of dynamic problems relating to policy instability and a lack of credible policy commitment. Meanwhile, the costs of legislative delegation, in principal–agent terms, entail a loss of policy control and/or effectiveness generated from adverse selection problems (i.e., delegating to the “wrong” agent) and moral hazard problems relating to bureaucratic drift (i.e., agent shirking).

In this section, I review the intellectual development of the first generation of modern delegation literature. Examined using the lens of how legislatures theoretically weigh the benefits and costs of delegation are four primary foci of that research genre: oversight mechanisms as latent controls, legislative “stacking of the deck” through procedural controls, budgetary controls on policy discretion, and structural controls on agency discretion. While Dan Wood touches on each of these areas, I restrict my attention to how they relate to delegation problems and also discuss some of these limitations in the extant research program.

Oversight Mechanisms of Policy Control

First-generation research on modern delegation was predicated on explaining two puzzles. First, can legislators control policymaking and implementation when they apparently spend little effort at such tasks? Further, can legislators design institutional mechanisms (via rules, procedures, and structures) to ensure that those agents possessing delegated authority act in a manner consistent with legislative preferences? In tandem, both puzzles are at the core of the modern study of legislative delegation. The former puzzle pertains to the optimal minimization of monitoring costs incurred from moral hazard (i.e., agency loss resulting from shirking), while the
latter puzzle pertains to maximizing incentive compatibility designed to ensure that executive branch agents act in a manner consistent with legislative intent.

Noting the demise of legislative oversight activity during the postwar era, many congressional scholars claimed that legislative oversight is a low payoff activity for legislators seeking electoral rewards and policy influence (Aberbach 1990; Ogul 1976; Scher 1963). This, however, did not necessarily mean that legislative abdication of policymaking had occurred. In a series of published works, Mathew McCubbins (and his various collaborators) explored the incentives legislatures had for delegating policymaking authority to the executive branch, without abdicating control over it.

In the realm of legislative oversight, members of Congress created “fire alarms” that would enable organized interests to notify them of when executive branch actors were deviating from legislative intent (McCubbins and Schwartz 1984). The use of fire alarms allows legislators to save their scarce time and resources for electoral and policy activities that accrue higher payoffs to them. The logic of fire alarm oversight means that legislators can minimize investment in monitoring costs (oversight activities) while simultaneously maximizing incentive compatibility with organized interests so that the latter can provide surrogate labor in monitoring executive action. In the event that organized interests have similar preferences to those of the agency, yet diverge from those of the legislature, then fire alarm oversight may be ineffectual since the principal’s (legislature) and de facto monitor’s (organized interests) policy preferences are not aligned with one another.

David Epstein and Sharyn O’Halloran (1995) have extended this logic by claiming that, in equilibrium, no fire alarm is touched off. Moreover, they claim that legislators can effectively control multiple competing interest groups by making decisions based on the range of moderate groups that straddle along the lines of support/no support for agency actions. Therefore, a legislature may find it easier to ensure compliance when interest groups are biased against agency policy than when they share identical preferences. However, this logic assumes, first, that there are multiple groups so that organized interest power is sufficiently diffuse. When power is not diffuse, then the legislature may experience agency losses from having an “opposing” organized interest that does not share its own policy aims. Second, the above logic assumes that organized interests possess equal power. If some groups, however, are advantaged in the struggle for obtaining policy benefits, one cannot presume that the legislature will split differences down the middle among moderate factions if the more powerful groups oppose legislative preferences. More generally, a focus on the concentration/diffuseness of interest group power and their relative preference location vis-à-vis the legislature and agency is critical for further extending the logical implications of fire alarm oversight beyond what we know at present.

Procedural and Rule-Based Control

The specific issue of procedural and rule-based constraints on the exercise of bureaucratic discretion is critical for understanding the precise mechanisms
intended to obtain agency compliance. As Wood points out in his chapter, McCubbins, Roger Noll, and Barry Weingast (subsequently McNollGast) (1987, 1989) claimed in a seminal pair of articles that legislators can minimize monitoring costs while maximizing incentive compatibility by constraining future executive action via the enactment of rules and procedures (see also Moe 1989). Procedures and rules, in particular, can be used not only to mitigate information advantages enjoyed by bureaucratic institutions but also to embolden important legislative constituencies (i.e., organized interests). Moreover, by legislators allowing those constituencies to participate in agency activities, organized interests can ensure that the agency is responsive to the legislators’ preferences (McNollGast 1987, 244).

In this manner, legislatures rely on the electoral connection between themselves and organized interests who are beneficiaries of policymaking as a means of incentive compatibility designed to reduce Congress’s efforts at labor-intensive oversight activities. “Deck-stacking” thus means that the legislature is essentially delegating its monitoring function to loyal organized interests that possess shared incentives. Because the Administrative Procedure Act of 1946 standardized baseline administrative procedures across all federal agencies, Congress can more easily constrain executive policymaking authority by requiring all promulgated rules to pass enhanced legislative scrutiny and uniform guidelines for procedural compliance (McNollGast 1987, 255–8; see the chapters in this volume by Rosenbloom, Mashaw, and Kerwin and his associates for an extensive discussion of this dynamic, divergent perspectives on it, and its consequences for American bureaucracy). Such procedural constraints are tightened when executive agencies are granted more policy responsibilities and also when policy conflict among legislators rises (McCubbins 1985).

The key insight drawn from this particular line of inquiry is that much of the political control that takes place is latent (i.e., ex ante) insofar as agencies choose policies sufficiently closer to legislative preferences in order to avoid sanctions (e.g., Calvert, McCubbins, and Weingast 1989). Yet the empirical evidence testing legislative control of the bureaucracy via rules and procedures has, at best, provided mixed evidence in favor of the deck-stacking hypothesis (e.g., Balla 1998; Hamilton and Schroeder 1994; Potoski 1999; Spence 1997). Perhaps one reason for the paucity of clear and consistent evidence supporting the efficacy of procedural constraints as conceptualized by McNollGast is that it fails to consider legislators’ desires to trade off between statutory (ex ante) and oversight (ex post) controls (Bawn 1997). That is, legislators not on the relevant standing committee prefer statutory control to diminish the power of “cozy iron triangles,” while those members serving on the relevant standing committee prefer oversight control whenever they can accrue benefits from constituents for their agency casework activities (Bawn 1997, 119). Still another reason for the chasm between theory and evidence in the realm of procedural rule-type controls is that they can be circumvented by executive agents for reasons discussed later in this chapter (see section on “third-generation” research).
Budgetary Mechanisms of Policy Control

In the realm of budgetary politics, D. Roderick Kiewiet and Matthew D. McCubbins (1991) argue that Congress’s desire to delegate construction of the U.S. federal government budget to the executive branch is not abdication (also see Mullins and Mikesell in this volume for a discussion of how political rationality and technical rationality intersect in this process). According to the logic of their bilateral bargaining veto model, presidents are constrained in offering budget proposals that exceed what Congress wishes to appropriate. This is because the president’s veto authority regarding appropriation bills can only be effective when Congress prefers a higher level of spending. Therefore, the president’s veto authority is rendered ineffective when executive budget proposals exceed congressional appropriations. Alternatively stated, Congress gladly cedes discretion to executive budgetary preferences so long as the executive request does not exceed legislative appropriations. Whenever this condition is not met (i.e., the president wishes to spend more than Congress), the legislature takes the reins of budget policymaking away from the executive branch.

Subsequent research by Nolan McCarty (1997) has shown that a president’s veto reputation is not immutably fixed through time but instead wanes across the lifecycle of the administration. In a related vein, Brandice Canes-Wrone (2006) shows that popular support of the president can afford chief executives a tangible advantage in extracting the resources that they desire from the budget process. In sum, then, the legislature enjoys the upper hand in presidential–congressional budgetary relations, albeit it can be conditionally weakened by popular presidents during the early portion of their tenure in office.

While this work tells us a great deal about legislative delegation in terms of presidential influence over budgetary outcomes, it does not speak to how budgetary outcomes are translated into bureaucratic action. Furthermore, even if the legislature does possess strong discretionary authority over resources between these two branches, this policymaking tool may be of limited influence due to an inherent tradeoff between desirable policy outcomes that provide additional (slack) agency resources and less preferable outcomes that come at a lower cost (Ting 2001). Moreover, the boundedly rational nature of information processing yields a sluggish agency response to congressional budgetary signals (Carpenter 1996; also see Workman and his associates, as well as Bendor and Hammond, in this volume on the impact of bounded rationality generally). Further, agency policy outputs endogenously affect resource growth. Thus, legislators are merely reacting to bureaucratic autonomy displayed by administrative agencies (Krause 1999). Therefore, even if legislators enjoy a robust position in determining budgetary outcomes as presumed in legislative delegation models, how this is translated into bureaucratic policymaking remains rather ambiguous as it relates to policy control.

Recent work by Jason MacDonald (2009) has offered a novel extension of the legislative delegation literature in the realm of budgetary control. MacDonald claims that past studies understate legislative control of the bureaucracy since they fail to consider “limitation riders,” which forbid agencies from spending money on specific
tasks, as a tool of political control. As a result, the importance of bureaucratic expertise as a mechanism for enhancing bureaucratic discretion is overstated, while preference configurations as a mechanism of legislative incentives understate political control in existing theories and tests of legislative discretion.

MacDonald’s logic centered on limitation riders provides a more stringent (and cleaner) test of legislative control over the bureaucracy than those focused on procedural constraints because these can be more easily circumvented by organizations relative to exacting resource constraints (Pfeffer and Salancik 1978). Nonetheless, since limitation riders are predicated on inaction, political control through this mechanism presumes that agencies monotonically desire more tasks (e.g., enforcement). This is not always the case since regulatory or administrative retrenchment may occur (e.g., Durant 1992; Nathan 1983; Waterman 1989). In such instances, what may appear as legislative control via limitation riders will be observationally equivalent to the agency’s preferred outcome. Also, while these limitation riders may signal political control through bureaucratic inaction, they may be observationally equivalent to intra-branch conflict between presidents (via political executives) and agencies (via agency executives and other careerists). Therefore, while this test adds an important advance to our understanding of legislative choice in delegation studies, it remains far from being a definitive test of legislative control over the bureaucracy.

**Structural Mechanisms of Policy Control**

Finally, first-generation studies also emphasized that delegation choices were affected by venue options: the choice between entrusting policymaking authority to an executive branch agency or an independent commission (Bernstein 1955; Fiorina 1982, 1986). I hasten to add that research has gone beyond this choice in institutional venue. Legislators also can determine whether to divide policy tasks among two or more agencies or let a single agency possess sole jurisdictional authority over it (see Ting 2002). However, I shall focus primarily on research studying the executive branch/independent commission choice.

Independent commissions enjoy greater insulation from executive politics due to having multi-member leadership, staggered appointment terms that do not coincide with a president’s tenure in office, and, in some instances, partisan balancing requirements (Lewis 2003). Executive agencies are much more subject to presidential influence since leadership at the agency comprises a single agency head, presidents can “hire and fire” agency heads at will, and these agencies are subject to legislative and budgetary oversight restrictions by the Office of Management and Budget (see Durant and Resh, as well as Rosenbloom, in this volume for extensive discussions and critiques of efforts to “presidentialize” the federal bureaucracy). Indeed, counterintuitively, Anthony Bertelli and Sven Feldmann (2007) even argue that presidents have an incentive to appoint political executives whose preferences are less closely aligned to their own in order to offset pressures from organized interests. It comes as no surprise, then, that legislatures seeking policy control typically prefer independent commissions to executive agencies.
as the institutional structure that houses policy administration activities (McNollGast 1987, 1989; Moe 1989). Moreover, from an interest group perspective (that legislators certainly pay attention to), Rui de Figueiredo (2002) makes the positive assertion that interest groups’ preference for insulating policy structures will occur when they are politically weak and, hence, do not expect to have sufficient influence over the governance of the administrative agency in question.

Empirical evidence on the executive/commission choice shows that this logic is borne out. If left to their own devices, legislatures prefer to “hardwire” agencies by creating institutional structures that are purposely insulated from executive influence—especially if their policy preferences diverge from one another (e.g., Lewis 2003; Volden 2002a; Wood and Bohte 2004). Furthermore, insulated institutional structures have the added benefit of being better able to absorb policy conflict and volatility arising from both politicians and organized interests (Lavertu 2009). Stephan Lavertu (2009) extends this delegation logic by claiming that presidents (or governors) will often prefer an insulated design so as to considerably reduce administrative uncertainty induced from conflict among organized interests.

Besides setting ex ante constraints via institutional design choices, legislative delegation decisions are also affected by the available venue options that the legislature has at its disposal at any point in time. Craig Volden (2002a) has formally shown that legislatures are prone to delegating authority to executive agencies under unified government when preferences between the executive and legislative branches are aligned with one another; independent commissions are more apt than executive agencies to receive delegated authority under divided government when these electoral institutions possess divergent preferences (see also Volden 2002b). Volden’s distinction between type of delegatory institution is a vital contribution, since policy delegation of legislative authority is not merely an “all or nothing” proposition and because some minimal level of legislative delegation is necessary in practically all policy matters. The delegation decision entails the legislature’s rational pursuit of maximizing incentive compatibility by selecting the “correct” policymaking venue—executive agency or independent commission—in accordance with the alignment of legislative and executive branch preferences.

The “Second-Generation” Study of Legislative Delegation to the Bureaucracy

As noted, much of the first-generation modern delegation literature focused on the legislature’s choice as driven by substantive policy concerns. As such, it implicitly considered only the political costs to the legislature of delegation, ignoring the
political costs and policy benefits of the presence or absence of bureaucratic expertise. Moreover, it portrayed bureaucratic capacity as fixed, as bureaucrats always enjoying information advantages over elected principals, and as bureaucratic capacity being exogenously determined by political principals rather than as potentially dynamic and endogenously driven by the agencies themselves (at least on the margins). Second-generation researchers realized that whether delegation was grounded in bilateral bargaining behavior whereby the legislature is in a “favored” position or organized interests perform de facto monitoring activities on behalf of the legislature, the true costs of delegation were being underestimated. In this section, I focus on two key areas of theoretical development pursued in second-generation research related to the scientific study of bureaucracy: refinements of our understanding of (1) how delegation decisions are informed as well by considerations of bureaucratic expertise and (2) how bureaucratic capacity is neither always a “given” nor exogenously determined. Both illustrate how a broadening of the conceptualization of the transaction costs of delegation have advanced theory building on the delegation of authority to American bureaucracy.

Getting Beyond Policy Alignment

The second generation of modern delegation literature has typically centered on legislators balancing the tension between working with bureaucrats (whose preferences are often not closely aligned with their own) and delegating their policymaking authority to agencies in order to reduce policy uncertainty and enjoy the benefits of policy expertise. This tension’s basic logic is best summarized by Epstein and O’Halloran: “But it is incorrect to conclude that Congress wants only to restrict agency discretion; legislators want to strike a balance between granting agencies too much leeway and constraining them so tightly that there is no room to incorporate bureaucratic expertise into policy outcomes” (1999, 27). Epstein and O’Halloran’s basic argument regarding the range of delegation afforded by the legislature to the executive is simple and powerful. When the principal’s (legislature) and the agent’s (executive) policy preferences are sufficiently distinct under a separating equilibrium, the legislature will not delegate policymaking authority to the executive branch. Conversely, when the principal’s and the agent’s policy preferences are sufficiently similar under a pooling equilibrium, the legislature will delegate policymaking authority to the executive branch (67–8).

Perhaps the most important testable implications derived from Epstein and O’Halloran’s (1999) particular logic are twofold. First, divergence between legislative (median floor) and executive (presidential) preferences results in a lower level of discretion granted to public agencies (Proposition 2, 75). Second, greater policy uncertainty (often but not always pertaining to task complexity and at other times to blame avoidance) will also increase the odds that the legislature chooses to delegate policymaking authority to the bureaucracy (Proposition 1, 75). Scholars such as John Huber and Charles Shidan (2002) also persuasively claim that legislators may possess a rational incentive to delegate even when executive branch preferences
sharply diverge from their own. This is because low-capacity legislatures incur large costs by not exploiting bureaucratic expertise in policy administration, costs that outweigh any accrued benefits from maintaining policy control. This is true, they argue, even when policy conflict between the executive and legislative branches is robust and political uncertainty surrounding enacting coalitions is sufficiently high due to electoral turnover.

In addition, recent theoretical research has begun to emphasize the institutional capacity of the agent—viz., the bureaucracy. For instance, Huber and McCarty (2004) offer an analytical model of delegation that explains what occurs when bureaucratic capacity (defined as bureaucratic competence involved in policy implementation) is low. Their theory predicts that low bureaucratic capacity not only yields poorer policy performance resulting from lower technical expertise but also has the negative second-order effect of making bureaucratic compliance to legislative intent less likely. Contrary to the standard predictions arising from delegation theories, Huber and McCarty predict that governments with low levels of bureaucratic capacity will choose to delegate less authority to bureaucrats possessing similar preferences. This theoretical result is of vital importance on a normative level. It suggests, first, that legislators do care about successful implementation of the legislation they enact and, second, that they recognize (as must researchers) that the vicious cycle of low bureaucratic capacity cannot be addressed by the standard principal-based remedies of placing a premium on political loyalty and oversight mechanisms. Rather, the solution to this problem must entail much more costly structural reforms that enhance the governance capacity of both elected and non-elected government institutions.

In turn, restrictive procedures accompanying delegation hinder the capacity of public agencies to weigh all relevant policy information and thus make an unfettered policy decision. Loose procedures, of course, adversely affect politicians’ capacity to direct policymaking. The crux of Kathleen Bawn’s (1995) argument in this regard offers yet another testable hypothesis: the legislature’s granting of discretion to a public agency—in the form of relaxed administrative procedures—increases as uncertainty over policy outcomes exceeds uncertainty arising from agency action. While not directly related to the legislature but certainly having implications for members, this tradeoff logic is further developed by Lavertu (2009) from the very different perspective of the president. He implicitly offers a fourth testable hypothesis by arguing that presidents will prefer to trade off policy control in favor of reducing policy outcome uncertainty by requesting less policy discretion. They do so because they do not wish to deal with the “costs” associated with interest group conflict and the resulting policy outcome uncertainty that arises from it.

Rethinking Information Asymmetries

The theme emphasized in research surveyed to this point has assumed that the institutional capacity of both political and bureaucratic institutions is immutably fixed. Simply, this research theme assumes a generic legislature and a generic agency.
Each is assumed to have a fixed level of institutional capacity. Moreover, by definition, the agency possesses greater capacity (in the form of technical expertise) than the legislature, making delegation a potentially desirable choice for legislators. In recent years, however, scholars pursuing second-generation research have been examining how varying (as opposed to static) institutional capacity also affects the delegation decision, as well as where incentives for building agency capacity (at least at the margins) come from. The bottom line, however, is that assumptions about the advantages of delegating authority to agencies because they hold greater fixed levels of expertise (i.e., they are favored by information asymmetry) do not always hold and thus also become part of delegation decisions.

For example, as noted, previous research assumed bureaucratic expertise was exogenously determined vis-à-vis the legislature, with technical expertise and skills attributed to bureaucrats primarily through the channels of organizational solidarity, professional networks, and educational background (e.g., Carpenter 2001a; Mosher 1982; Rourke 1984; Wilson 1989). More recent scholarly attention has focused on whether bureaucrats are more likely to alter their costly marginal investment in acquiring additional information under a variety of circumstances related to their political environment. Put another way, administrative agencies as organizational bodies possess a reservoir of knowledge and expertise due to such things as organizational continuity and standard operating procedures. However, agencies’ incentives for devoting the marginal additional effort of being informed about a given policy matter in ways that preserve information asymmetries over elected officials are neither “givens” nor always endogenously determined by their political environment.

Matthew Stephenson (2007), for instance, argues that an “uninformed” agency will, in fact, only increase its technical expertise when its leaders prefer to adopt new regulations because of their political environment. Conversely, this means that agencies are willing to make costly research investments in expertise (i.e., request funding from Congress) when they prefer a new regulation to the status quo policy and when they have a better sense of learning the true effects of that particular new regulation. Sean Gailmard and John Patty (2007, 2008) also endogenize bureaucratic expertise in a sophisticated dynamic legislative delegation model. They show that civil service job protections and lower outside wage offers, coupled with granting bureaucrats discretion over policy, will produce a regime of politicized competence. Gailmard and Patty also provide an innovative theoretical contribution to the study of delegation by focusing on agents’ implicit incentives attributable to career concerns (for more general applications to public bureaucracy, see Alesina and Tabellini 2007; Dewatripont, Jewitt, and Tirole 1999). This differs markedly from the standard approach, which posits that explicit incentives bound directly to ex ante and ex post contractual-based mechanisms are dispositive.

Although these conceptions of endogenous bureaucratic expertise hold considerable promise by shifting focus from bargaining among politicians to those responsible for utilizing delegated policymaking authority, this nascent strand of inquiry must tackle a few critical remaining issues before its promise can be fully realized. First, the human capital stock residing within agencies is effectively ignored, since
these theories are limited to examining only marginal investments in expertise that reflect human capital flows. This focus on relatively small changes in bureaucratic expertise can provide a highly misleading sense of bureaucratic capacity because most of this commodity has already been exogenously established prior to the arrival of individual bureaucrats in a given agency. Second, any incremental change in human capital investment flows may be offset by agencies having to function under a prescribed set of norms for administering policy consistent with the agency’s mission or the broader professional culture (Carpenter 2001a; Rourke 1984; Wilson 1989). Third, and relatedly, this human capital stock (which occurs exogenous to the legislative–agency bargaining relationship) varies considerably across agencies based upon the structural demand for bureaucratic expertise and the institutional context in which the exercise of bureaucratic expertise is insulated from political influence (Lewis 2003; Moe 1989; Wood and Bohle 2004). Fourth, endogenous human capital investment theories ignore variations in organizational stability and, in turn, their effect on the marginal costliness of investment in expertise. That is to say, low personnel turnover and routinized procedures lower the costly investment of additional information needed to augment bureaucratic expertise. Finally, by internalizing the costs of marginal information search to the agency/bureaucrats in question, these models fail to consider explicitly the well-established informational role played by organized industry and professional groups that are capable of lowering the marginal costs associated with bureaucratic decision making (see Carpenter 2002, 2004; also see the chapters by Riccucci and Keiser in this volume for broader notions of the role of representation, recapitalization of assets, and legal requirements).

Nonetheless, the study of endogenous bureaucratic expertise has considerable promise for understanding legislative delegation since it creates a more sophisticated portrait of incentive compatibility problems facing both principal and agent. It also has helped refine delegation models and mindsets that assume fixed and uniform information advantages for the bureaucracy. And by introducing the idea of a proactive rather than merely reactive bureaucracy, it has helped propel a third generation of research that gives bureaucracy a more agentic role in delegation studies.

**Toward a “Third Generation” of Research? Reconsidering the Nature of Legislative Delegation to the Bureaucracy**

Even with its limitations, the modern delegation literature has provided both a constructive and an informative research program for understanding the allocation of power among governmental institutions. From the core insights of McNollGast
(1987, 1989) through the most elegant (and general) treatment of stylized delegation models by Jonathan Bendor and Adam Meirowitz (2004), the modern delegation literature has shed important light on the incentives, mechanisms, and circumstances by which legislative control of, or delegation to, bureaucratic agencies occurs. Specifically, legislators possess the conflicting incentives of: (1) having policy outcomes come as close to their most preferred outcome (ideal point) as possible, (2) seeing successful policy outcomes that are closely dependent on levels of bureaucratic expertise and discretion, and (3) doing all this while minimizing the costs associated with both sides of these conflicting incentives.

Legislators use various mechanisms when delegating authority. These mechanisms range from administrative rules and procedures to budgetary resources to institutional structures. The general hypotheses that can be drawn from this extant literature are that legislatures should be more willing to delegate policymaking authority to the bureaucracy when: (1) their (principal’s) monitoring costs rise, (2) the incentive compatibility for the bureaucracy (agent) increases, (3) the policy conflict between the legislature and agency declines, (4) policy uncertainty rises, (5) the agent’s expertise and/or effort rises, and (6) an increasing desire exists to “lock in” policy to solve credible commitment problems.

However, for advances in scientific theory building on legislative delegation choices to occur, a more explicit and sophisticated treatment of the role of the executive branch in bureaucratic policymaking has to advance beyond what has been done to date. Because most of the advances in legislative delegation research emanate from students of legislative politics in political science, it is hardly surprising that considerably more effort has been expended in modeling the role of the legislature than of the executive branch (Moe 1990). The extent of modeling of the executive branch in separation-of-powers models of delegation is often relegated to providing a unique ideal point for agency heads and presidents (for notable exceptions, see Bendor and Meirowitz 2004; Gailmard and Patty 2007; Ting 2002). Such a focus, however, comes at a considerable expense to theory. Specifically, the modern delegation literature is primarily focused on understanding the supply of bureaucratic discretion, with little explicit concern for either the demand for or actual exercise of bureaucratic discretion.

The importance of focusing on the agent's problem in matters of delegated authority is most articulately captured by Moe in the following quote:

But alas, not only is control destined to be imperfect in political practice, it is destined to be doubly imperfect: there is slippage as groups try to control politicians, and there is slippage as politicians try to control their bureaucratic subordinates. Bureaucrats will therefore have a measure of autonomy, perhaps a substantial measure—and they can use the coercive power of public authority to pursue their own interests at the expense of their creators. (1990, 234)

Put simply, a fundamental criticism of the extant legislative delegation literature is that it makes implied statements about bureaucratic policymaking. It does so by telling us little about executive action and, hence, about what bureaucrats actually do with the policy discretion that they are granted by the legislature and the resulting
policy outcomes (for a similar point, see Durant and Resh in this volume). In contrast, and as many of the chapters in this handbook attest, public administration and public management scholars have focused largely on what bureaucrats do with their discretion and much less on the conditions whereby their discretion is expanded or restricted. In light of all this, I offer four broad recommendations for reorienting the research attention of delegation scholars toward topics critical for our understanding to advance appreciably on how delegation decisions get translated into actual bureaucratic policy actions.

Recommendation # 1: Strengthen the Presumed “Weak” View of Executive Authority

Existing theories of legislative delegation assume that grants of executive discretion occur only within the legislative process via statutory means. In reality, presidents can circumvent a legislature’s decision to withhold policymaking authority by employing executive orders to grant themselves greater policymaking discretion (Howell 2003; see Durant 2008, 2009, as well as Durant and Resh in this volume, for constraints on these actions during implementation). In such instances, legislatures are almost always powerless since they have little chance of passing legislation that overturns unilateral executive actions (Moe and Howell 1999). Future research on legislative delegation that explicitly accounts for the possibility of unilateral action as a “side option” at the president’s disposal may unearth previously unmodeled limits of legislative policy control. For instance, when legislatures do not have veto override majorities in both chambers and the executive cares enough about the policy in question, it is quite possible that a strategic president or governor will circumvent the legislature’s delegation decision by issuing an executive order designed to grant themselves greater policy control.

A second manner in which executive branch actors can be fortified in delegation models is to account for how they endogenously create greater autonomy from the legislative branch. Specifically, bureaucratic agencies at various organizational levels can cultivate autonomy from political institutions through their own actions. These include through selective recruitment of individuals who share the agency’s core mission and through building a reputation for policy competence and credibility (Carpenter 2001a, 2001b). Not only is bureaucratic autonomy distinct from the bureaucratic discretion that is bestowed upon agencies by politicians, but it lies outside a formal contractual relationship that is the embodiment of the canonical legislative delegation problem (Carpenter 2001a, 16–18). The difficulty of remediying this problem using the existing principal–agent-based framework rooted in explicit incentives is that bureaucratic autonomy lies outside the contractual relationship (Carpenter 2001a; Krause 1999; also see Frederickson and Stazyk in this volume for a broader and biting critique of principal–agent theory more broadly).

Daniel Carpenter and I (2009) recently proposed a possible alternative theoretical framework for studying such problems. An audience-based framework, it allows for
bureaucratic agents to be motivated outside the explicit, formal contract with political institutions. These “external” sources of influence include implicit contracts such as career concerns (e.g., Alesina and Tabellini 2007; Dewatripont, Jewitt, and Tirole 1999; Holmstrom 1982), reputation building among professional peer associations and groups (e.g., Balla 2001; Carpenter 2001a; Frumkin and Galaskiewicz 2004; Krause and Douglas 2006), the vitality of local institutions directly affected by bureaucratic policy choices (e.g., Scholz and Wang 2006), and organizational identification with both the agency’s goals and the expectations that arise from sources beyond the parameters set by formal authority and contractual relationships (e.g., Akerlof and Kranton 2005; Hannan 2005; Simon 1991).

Certainly, public administration researchers have recognized for at least six decades that these factors have both negative and positive effects on accountability (e.g., Finer 1941; Friedrich 1940; Mosher 1982; Khademian in this volume). So, too, have sociological institutionalists placed legitimacy at the heart of organizational behavior (Hall and Taylor 1996). Yet they have been lacking in legislative delegation research. Failing to account for such “exogenous” shifts induced by bureaucratic agents’ political legitimacy may erroneously equate high levels of policy discretion granted by the legislature—reflecting latent political control—with an absence of bureaucratic autonomy (Carpenter 2001a, 357). For legislative delegation research, such a focus requires examining the endogenous symbiotic interaction of organized interests and professional associations with bureaucratic agencies. This is a relationship distinctly at odds with the current predominant perspective on theories of delegation, which treats legislatures and interest groups as natural allies (e.g., the logic of fire alarm oversight). Nor is this a trivial concern. If one views policy discretion granted by legislators to bureaucrats as representing a minor portion of agency policymaking authority (Carpenter 2001a, 17), then it naturally follows that the current state of legislative delegation research still has considerable room for development so as to enhance our understanding regarding the actual exercise of policymaking authority.

**Recommendation # 2: Provide a Richer Portrait of Hierarchical Relations within the Executive Branch between Presidents and Administrative Agencies**

As noted, most legislative delegation theories and empirical tests generally focus on the nature of conflict and uncertainty regarding legislative–executive relations (e.g., Epstein and O’Halloran 1999). Subsequent theoretical advances have distinguished between agency and presidential preferences (e.g., Volden 2002a). Delegation research has also focused on hierarchical distinctions between floor and committee preferences (e.g., Epstein and O’Halloran 1999; Ferejohn and Shיפan 1990). Such a focus on hierarchy within legislatures is valuable since it is essential for understanding the focal point of coordination within a given institution (Cox and McCubbins 1993; Weingast and Marshall 1988).
However, the legislative delegation research program has spent little effort on examining these vertical or hierarchical coordination dilemmas within the executive branch among presidents, political executives, and career executives. Because these dilemmas are difficult to resolve (Miller 1992, ch. 5) and any particular solution has unintended consequences (Hammond and Thomas 1989), addressing this matter is a daunting challenge for students of legislative delegation research. Successful resolution often requires trust and cooperation between superiors and subordinates (Brehm and Gates 1997; Miller 1992), factors that are eschewed in existing legislative delegation models. These models are typically centered on the dual pillars of formal authority and coercive means—whether explicit or implicit—to obtain compliance.

Nonetheless, these hierarchical dilemmas are of even greater consequence in executive branch than legislative politics. Because actors at different levels of the executive branch possess varying incentives and preferences (Krause 2009; Miller 2000), vertical coordination problems make cohesive executive action much more difficult than envisioned in current theories and empirical tests of legislative delegation. In a recent paper analyzing the staffing of different rungs within an administrative hierarchy, Stuart Jordan (2009) advances a clever argument. He argues that even if bureaucrats at these different organizational levels (e.g., federal executives versus street-level bureaucrats) possess identical preferences, they will exhibit internal disagreement because their subunit environments are sufficiently different from one another. This, he argues, is by organizational design by Congress as a means of avoiding “extremist” administrative behavior that either favors or rejects client requests in every instance.

Clearly, bureaucrats' preferences do systematically vary across these organizational subunits within public agencies (e.g., Aberbach and Rockman 2000; Seidman and Gilmour 1986). Indeed, internal disagreements—and, hence, hierarchical coordination problems—are even more severe in practice than characterized by Jordan's (2009) conservative theoretical model. To understand properly how policy discretion is actually used by bureaucrats, one must focus on such thorny intra-branch relationships if the legislature's delegation choice is going to be explicitly linked to actual policy outcomes involving bureaucratic action.

Thus, while the view of a unified executive adopted in many delegation theories may be consistent with constitutional design features (e.g., Epstein and O'Halloran 1999), it does not closely mirror the practice of governance within the executive branch (West 2006). In reality, political executives (appointees) often serve as brokers between presidents seeking to exert their will over policy administration and the permanent career bureaucracy (Aberbach and Rockman 2000). That is, formal authority has limits in obtaining compliance in hierarchical relationships (Miller 1992, 120; also see especially Durant and Resh, Bendor and Hammond, and Rosenbloom in this volume for diverse perspectives on these dynamics). In U.S. executive branch politics, presidents must rely on bargaining strategies to ameliorate the information asymmetries that they encounter in relation to their staff and agency-level subordinates (Rudalevige 2005). Because the severity of this information asymmetry problem increases as one moves from the president to street-level bureaucrats responsible for enforcing laws and administering
public policies (see Maynard-Moody and Portillo in this volume), the slippage that occurs in the chain of command within the executive branch is more pervasive than what transpires within the legislative branch among chambers, parties, and committees.

Further exacerbating executive branch coordination problems is the fact that presidents and political executives possess much shorter policy time horizons than do both the career executives and street-level bureaucrats who comprise the permanent bureaucracy. Presidential attempts at controlling bureaucratic policymaking are hampered by their short time in office (Waterman 1989, 189). Likewise, the “revolving door” for political executives (Heclo 1977) adversely affects both organizational continuity and expertise. This problem is further exacerbated by presidents who strategically manage political executive positions through cyclical creations and reductions in the proportion of appointees in order to establish policy and administrative control over agencies (Lewis 2008; also see West 2006 for a contrarian perspective that challenges the notion that presidents do, or can, think strategically in this fashion). This tension between personnel with differing time horizons means that when legislatures choose to delegate policymaking authority to the executive branch, it is quite uncertain how that authority will be exercised.

The implications of intra-branch coordination within the executive branch are thus far-reaching for understanding the consequences of legislative delegation. This is because delegation choices often have unintended policy consequences since hierarchical conflict and instability make the exercise of policy discretion allocated by the legislature rather difficult within agencies. Understanding these intra-branch coordination dilemmas is necessary for properly modeling the linkage between policy discretion supplied by the legislature and subsequent policy outcomes involving bureaucratic action.

**Recommendation # 3: Better Characterize the “Demand Side” of Executive Discretion**

As I have argued elsewhere (Krause 2003), classic treatises on public organizations view discretion as a variable commodity that can be either spurned or embraced by administrators depending on self-interest (Rourke 1984, 41–2; Thompson 1967, 118; Wilson 1989, 251). Unfortunately, the modern delegation literature neither shares nor models this understanding of policy discretion. Canonical treatments of legislative delegation presume that the executive branch monotonically obtains greater utility from increases in policy discretion (but, again, see Bendor and Meirowitz 2004 and Ting 2002 for important exceptions). Yet contrary to the prevailing view of modern delegation studies, bureaucratic agencies are, in fact, proactive in shaping the contents of legislation (Rieselbach 1995, 212–14; see also Wilson 1989, 251). And in shaping legislation, several reasons exist as to why bureaucratic agencies may seek less, not more, policy discretion.

Bureaucratic agencies may not only be risk-averse with respect to policymaking uncertainty. They also may find themselves in a discretionary context where the marginal net benefits associated with discretion are negative (Krause 2003, 46).
Under these conditions, agencies may seek less discretion whenever the following conditions exist: high levels of political fragmentation (e.g., divided government), high task complexity, low organizational (agency) stability, and high issue salience.

In addition, the emergence and corresponding growth of the executive branch arising from the modern institutional presidency (Burke 1992; Dickinson 1997) have meant that many bureaucratic agencies are sufficiently occupied with present policy and administrative tasks such that they are not in a position to want or seek additional responsibilities. As noted, it is even possible that agencies may be seeking less discretion as a way to economize scarce resources. At the same time, executive branch actors may seek less discretion as a means to avoid conflict with and, hence, blame from organized interests (Lavertu 2009). In addition, higher levels of legislative capacity relative to executive capacity may also result in the executive branch actively seeking less discretion since they are less sufficiently equipped to handle policymaking responsibility without restrictions emanating from the legislative branch.

But if bureaucrats do not uniformly seek greater discretion (see below), what implications does this have for understanding legislative control over the bureaucracy? When the legislature chooses not to supply policy discretion to an agency, by definition the appearance of political control is merely illusory if public agencies are not demanding more discretion. Put differently, if bureaucrats want less policy discretion (control) and legislators oblige by granting them less discretion, then bureaucrats are the party getting their desired outcome. Conversely, if bureaucrats want less policy discretion and legislators do not oblige by granting them additional discretion, then the legislature is imposing its preferences for policy discretion over the agency.

As a consequence, the need for future research to focus on demand for executive discretion is critical. To do otherwise is to only know of legislative intentions without directly observing those actors most proximate to policy outcomes—bureaucrats. A greater focus on the executive branch may even eventually yield a unified theory of policymaking in which legislative delegation is a key component that intersects with executive action. At present, the delegation literature provides a very useful lens into bureaucratic policymaking regarding the legislature’s incentives for allocating formal policymaking authority to the executive branch. Nonetheless, this literature has yet to constitute a holistic view of policymaking and implementation within the modern administrative state.

**Recommendation #4: Discern Whether or Not, and Why, Delegation Makes a Policy Difference**

Greater research attention to the first three recommendations might also provide an ancillary benefit of insight into whether the commonly accepted “first-principle” assumptions motivating the legislative delegation decision are, in fact, empirically
valid. For example, does legislative delegation necessarily result in reducing opportunistic policy manipulation as commonly presumed in extant research? A recent empirical study of official general fund revenue forecasts in the American states conducted by David Lewis, James Douglas and myself (Krause, Lewis, and Douglas 2010) reveals that legislative delegation to either the executive branch (i.e., governors) or an independent commission (i.e., consensus groups) will only insulate policymaking from opportunistic policy manipulation when the political system itself fails to check either legislative excesses that are attributable to unified party government or executive myopia resulting from gubernatorial term limit restrictions.

If not, however, a more direct approach to assessing these assumptions is vital for theory building to proceed profitably. Basically, these are the “so-what” questions related to delegation. That is, does legislative delegation to a public agency truly lead to superior policy performance? If not, why not? Further, does legislative delegation to an insulated agency (e.g., independent commission) provide superior performance vis-à-vis a less insulated agency under the direct aegis of the executive branch? If not, why not? Does a lack of legislative delegation necessarily result in a loss of bureaucratic influence over policymaking? If not, why not? Regardless of the questions asked or results discerned, however, viewing legislative-executive policymaking relations as a two-way street is a necessary condition for advancing the scientific study of legislative delegation in America.

References


